



July 20, 2001

Ms. Cathy S. Compton  
Assistant District Attorney  
Hays County  
110 East Martin Luther King  
San Marcos, Texas 78666

OR2001-3166

Dear Ms. Compton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149703.

The Hays County District Attorney's Office (the "district attorney"), the Hays County Sheriff's Department (the "department"), and the Hays County Narcotics Task Force (the "task force") received a request for a copy of the complete file involving a specified shooting death.<sup>1</sup> We note that you inform this office that we have ruled on the same requested information in Open Records Letter No. 2000-2947 (2000) in which we concluded that much of the information held by the district attorney or to which the district attorney had access was excepted from disclosure under section 552.108(a)(2) of the Government Code. Because the department and the task force were not addressed in our previous ruling, we will address the applicability of your asserted exceptions to the submitted information. *See* Open Records Decision No. 673 (2001) (providing that a governmental body may rely on a ruling as a "previous determination" if four factors are met, which includes the requirement that the governmental body which receives the request for the information is the same governmental body that previously requested and received a ruling from the attorney general). You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and have reviewed the submitted information.

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<sup>1</sup>You explain that the district attorney is requesting a decision on behalf of the department and the task force.

We initially note that the submitted information includes autopsy records that are subject to disclosure under other law. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Therefore, the district attorney, the department, and the task force must release the autopsy records in accordance with section 11 of article 49.25 of the Code of Criminal Procedure.

We further note that the submitted information includes search and arrest warrants and related supporting affidavits. If the warrants themselves have been filed with a court, then they are public and must be released. *See* Gov't Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Furthermore, if the search warrants have been executed, then the search warrant affidavits are public records and must be released. *See* Code Crim. Proc. art. 18.01(b).

The submitted information also includes a grand jury document. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See generally* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, if the document in question is in the custody of the

district attorney as agent for the grand jury, then it is in the constructive possession of the grand jury and therefore is not subject to disclosure under chapter 552 of the Government Code. If the document is not so held, then it is subject to disclosure under chapter 552 except as determined in this ruling.

You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code, the "law enforcement exception." Section 552.108 provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. *See also* Open Records Decision No. 616 (1993) (construing statutory predecessor). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In this instance, you inform us that the requested information pertains to an incident in which a suspect in an investigation was shot to death. You further inform us that the grand jury declined to indict the officer involved in the shooting, concluding that it was justified. You also advise us that the district attorney, the department, and the task force consider the case to be closed. Based on your representations and our review of the submitted information, we conclude that the requested information, except as otherwise noted, is excepted from public disclosure under section 552.108(a)(2) of the Government Code.

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district attorney, the department, and the task force must release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of the corresponding police report. *See* Gov't Code § 552.108(c); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

In summary, the district attorney, the department, and the task force must release the autopsy records and affidavits submitted in support of executed search warrants. Any requested information that also is a matter of public court record must be released pursuant to section 552.022(a)(17) of the Government Code. If the grand jury document is held by the district attorney as an agent for the grand jury, it is not subject to chapter 552. Otherwise, this

document and the remaining requested information is excepted from public disclosure under section 552.108(a)(2) of the Government Code, except for basic information, which must be released pursuant to section 552.108(c). As we are able to make a determination under section 552.108, we need not consider the section 552.103 claim.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

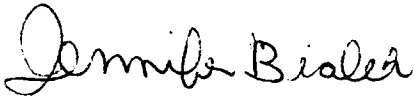
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<sup>2</sup>We note, however, that a successful claim under section 552.103 generally does not except from required public disclosure essentially the same basic information that must be released under section 552.108(c). See Open Records Decision Nos. 597 (1991), 362 (1983).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 149703

Enc: Submitted documents

c: Ms. Ranelle M. Meroney  
Chamberlain & McHaney  
Attorneys At Law  
P.O. Box 684158  
Austin, Texas 78768-4158  
(w/o enclosures)